Supreme Court U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

NANNETTE DENOUDEN,

Petitioner Pro Se,

vs.

THE UNIVERSITY OF WASHINGTON, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Nannette Denouden,
Petitioner Pro Se
P.O. Box 13123
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30pp

QUESTIONS PRESENTED

Does the Eleventh Amendment allow a suit to enforce the copyright laws against a State?

Can Fifth Amendment privilege be asserted during civil discovery proceedings to protect rights accorded under 20 U.S.C. § 1232(g) and tile 17 Copyrights?

PARTIES TO THE PROCEEDING

All parties do not appear in the caption on the cover page. A list of all parties to the proceeding is as follows:

The University of Washington, Respondent

Board of Regents, Respondent:
Cindy Zehnder, President
William H. Gates, Vice President
Daniel J. Evans
Shelly Yapp
Jeffrey H. Brotman
Ark G. Chin
Mari J. Clack
Jennifer Frankel
Gerald Grinstein
Constance L. Proctor

Respondents:
Norman Rose, Dean
Steven Olswang, Provost
Daniel Jacoby, Professor
C. Patrick Morris, Professor (deceased 9/96)

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties to the Proceedings	ii
Table of Contents	iii
Table of Citations	iv-vi
Appendix	vi
Opinions Below	1
Statement of Jurisdiction	1
Statutory Provisions Involved	1
Statement of the Case	2
Reasons for Granting the Writ	4
Conclusion	15

TABLE OF CITATIONS

Cases Cited:

Atascadero State Hospital v. Scanlon, 473 U.S. 234 (1985)..... 4, 7

Bauer v. Kincaid, 759 F.Supp. 575 (W.D.Mo.1991).. 12

BV Engineering v. UCLA, 657 F. Supp. 1246 (9th Cir. 1988)..... 4, 7

Campbell v. Gerrans, 592 F.2d 1054 (1979)..... 15

Chavez v. Arte Publico Press, No. 93-2881, 1998 WL 184437 (5th Cir. Apr. 20, 1998)..... 6

Ex parte Young, 209 U.S. 123, 28 S. Ct. 441, 52L.Ed.714 (1908)..... 7

G-K Properties v. Redevelopment Agency, 577 F.2d 645, 648 (9th Cir. 1978)..... 14

Goldfarb v. Virginia State Bar, 421 U.S. 773, 792 n. 22 (1975)..... 5

Greidinger v. Davis, 900 F.2d 1344 (4th Cir. 1993).. 11

I.B.E.W. Local U. No. 5 v. U.S. Dept. of HUD, 852 F.2d 87 (3rd Cir 1988)..... 10

In re Master Key Litigation, 507 F.2d 292, 293 (9th Cir. 1974)..... 15

Oppenheimer v. Sanders, 437 U.S. 340, 353, 98 S. Ct. 2380, 57 L.Ed. 2d 253 13

Re: W.R. Grace & Co.-Conn., 984 F2d 587 (1993, CA2) 12

Seminole Tribe of Florida v. Florida, et al., 517 U.S 44, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996) 4, 5

U.S. v. Bodwell, 66 F.3d 1000 (9th Cir. 1995) 15

U.S. v. Drollinger, 80 F.3d 389 (9th Cir. 1996) 15

Whalen v. Roe, 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977) 8, 9

Wyle v. R.J. Reynolds Industries, Inc., 709 F.2d 585 (1983) 14

Statutes Cited:

17 U.S.C. § 511 Liability of States 4, 5, 6

20 U.S.C. § 1232(g) 8- 9, 12

34 CFR Part 99 8

Fourth Amendment 14

Fifth Amendment 9, 15

Eleventh Amendment 4, 5, 6, 7

Fourteenth Amendment..... 7

Washington Administrative Code 478-140-010..... 8

Rules Cited:

FRAP 26..... 13

APPENDIX

Appendix 1 - Order of the United Courts of Appeals for the Ninth Circuit Denying Petition for Rehearing Filed November 17, 1998.

Appendix 2 - Unpublished Opinion of the United States Court of Appeals for the Ninth Circuit filed July 28, 1998.

Appendix 3 - Opinion of the United States District Court, Granting Respondent's Motion for Sanctions and to Dismiss Filed November 24, 1997.

Appendix 4 - 17 U.S.C. § 511

Appendix 5 - 34 CFR Part 99 Section § 99.37(2)

Appendix 6 - WA Administrative Code 478-140-010

Appendix 7 - 20 U.S.C. § 1232(g)

OPINIONS BELOW

The Order of the United States Court of Appeals denying petitioner's request for a rehearing appears at Appendix 1 to this brief and is unpublished.

The Order of the United States Court of Appeals denying petitioner's appeal from the district court appears at Appendix 2 to this brief and is unpublished.

The Order of the District Court dismissing petitioner's case appears at Appendix 3 to this brief and is unpublished.

STATEMENT OF JURISDICTION

A Petition for Rehearing was denied by the Ninth Circuit on November 17, 1998 (App. 1). The Judgment of the Court of Appeals was entered on July 28, 1998 (App. 2). The Court has jurisdiction pursuant to 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

17 U.S.C. § 511 Liability of States
20 U.S.C. § 1232(g)
34 CFR Part 99
Washington Administrative Code 478-140-010

STATEMENT OF THE CASE

This case was commenced in August 1995 by a current University of Washington student, Nannette Denouden, and premised under title 17, 20 § 1232(g), 42 U.S.C. §1983 and §1985(c). Respondents admit to willfully copying petitioner's unpublished copyrighted manuscripts that were created as assignments while at the University.[1] Respondents did so without petitioner's knowledge and still retain the same for their personal use.

The spiral of events began in April 1996 when petitioner filed a motion asking the district court judge to recuse himself. On June 11, 1996, respondents called petitioner to a deposition and while there, petitioner invoked what she reasonably perceived as constitutional and statutory privileges as answers to three (3) questions. Respondents ended the deposition alleging petitioner failed to cooperate, and later moved to compel/sanction. Petitioner filed the customary response motions. Likewise she moved for a ruling on federal questions raised during the deposition and for a protective order--to protect from disclosure personal identifiable data [e.g., social security number, date of birth, income tax and medical records].

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[1] RCW 28B.10.582 states that "'assignment' means any specific written, recorded, pictorial, artistic, or other academic task--including but not limited to term papers, theses, dissertations, essays, and reports that is intended for submission to any postsecondary institution--in fulfillment of the requirements of a degree, diploma, certificate, or course of study at any such educational institution." Also, petitioner was awarded copyrights for the works in question entitled Organized Labor: Another American Monopoly, Registration # TXu 694-434; and Congressional Termination of the Federal-Tribal Relationship--Registration # TXu 714-156.

On July 16, 1996, the district court issued an Order referring "all current & future nondispositive mtns" (sic) to the magistrate, despite the previously filed Joint Status Report stating that "the parties do not consent to the reference of this case to a Magistrate Judge." In July 1996, the magistrate summarily denied petitioner's motions, and later dismissed the issue regarding state immunity from suit under the Eleventh Amendment. In addition, petitioner was sanctioned two hundred and fifty ($250.00) dollars for invoking statutory privileges during the June 11, 1996 deposition. Petitioner objected and on August 7, 1996, the district court upheld the magistrate's rulings without a *de novo* hearing.

On July 2, 1997, petitioner was ordered to appear for a second deposition in the magistrate's chambers, with the magistrate present to rule on any claim of privilege to questions posed. Petitioner appeared and cooperated even though a stay of all discovery proceedings (DC docket 96-100, 102) was still in effect. At that in-chamber deposition petitioner again invoked Fifth Amendment and other statutory privileges. Only then did the magistrate inform petitioner that her case will be dismissed for invoking constitutional and/or statutory privileges.

On November 24, 1997, the court upheld the magistrate's order of dismissal and sanctions of an additional seventy-seven dollars ($77.00)--along with the previously imposed two hundred fifty dollars ($250.00)--for invoking constitutional and statutory privileges during civil depositions. On July 28, 1998, the Ninth Circuit affirmed the district court's ruling, and on November 17, 1998, the court denied petitioner's request for a rehearing.

REASONS FOR GRANTING THE WRIT

The petition should be granted to clarify the Court's ruling in Seminole Tribe of Florida v. Florida et al., thereby deciding the question of whether Congress has the power to abrogate state sovereign immunity from suit under the Eleventh Amendment, where title 17 Copyrights are concerned.

It is of national importance for the Court to exercise its discretionary power of review to alleviate the confusion in the circuits regarding state immunity from suit under the Eleventh Amendment.

In 1985, the Court reasoned in Atascadero State Hospital v. Scanlon that any intent of Congress to abrogate state sovereign immunity must be "explicitly and unambiguously" stated in the statute. Although *Atascadero* did not address copyrights, the 1988 case of BV Engineering v. UCLA did, and it echoed the reasoning found in *Atascadero*. In *BV Engineering*, the Ninth Circuit held (in part) that:

> [W]e are constrained by the Supreme Court's mandate that we find an abrogation of eleventh amendment immunity only when Congress has included in the statute unequivocal and specific language indicating an intent to subject states to suit in federal court. Such language is absent from the Copyright Act of 1976. We recognize that our holding will allow states to violate the federal copyright laws with

> virtual impunity. It is for Congress, however, to remedy this problem.

In 1990 Congress did remedy the problem by enacting the Copyright Remedy Clarification Act in response to *Atascadero, BV Engineering* and other cases. Congress included unequivocal and specific language in the Act to abrogate State sovereign immunity to permit the recovery of money damages against any State or its employee acting in official capacity for violating copyrights. Petitioner's copyright action was filed in district court in August 1995, five (5) years after the Act was amended. Congress desired that defendants and States alike be subject to the same copyright rules. (App. 4).[2]

Yet in the 1996 case of Seminole Tribe of Florida v. Florida, confusion arises as the Court states that:

> [I]it has not been widely thought that the federal antitrust, bankruptcy, or copyright statutes abrogated the States' sovereign immunity. This Court never has awarded relief against a State under any of those statutory schemes; in the decision of this Court that JUSTICE STEVENS cites (and somehow labels "incompatible" with our decision here), we specifically reserved the question whether the Eleventh Amendment would allow a suit to enforce the antitrust laws against a State. *See Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 n. 22

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[2] *See also* Legislative History of Copyright Remedy Clarification Act of 1990 at 3950.P.L. 101-553, see page 104 Stat. 2749 House Report No. 101-282(I) H.R. 3045 (S. 497) page 3959.

> (1975). Although the copyright and bankruptcy laws have existed since our nation's inception, and the antitrust laws have been in force for over a century, there is no established tradition in the lower federal courts of allowing enforcement of those federal statutes against the States. Id. at n. 16.

Today petitioner asks the Court to enforce the Copyright Act of 1990 against respondent state of Washington, since the Ninth Circuit did not do so.

It is worth noting, however, that respondents successfully argued that Congress did not have the power to define the scope of state sovereign immunity concerning copyrights, despite the amendment to the Copyright Act in 1990. Respondents argued that:

> Thus, under the plain rulings of *Seminole* and *Chavez*, Denouden's copyright claims against the University in federal court must be dismissed for lack of jurisdiction, as Congress did not have the power to abrogate the state's sovereign immunity under the Copyright Act, 17 U.S.C. § 1511. [...] The Fifth Circuit also held that Chavez' argument that (sic) the University's actions deprived her of property interests protected by the Fourteenth Amendment was without merit, stating that reliance on the Fourteenth Amendment "as a post hoc justification for Congress's (sic) attempted abrogation in 11 U.S.C. §106 would require us to ignore the

> result in *Seminole*." *Chavez* at 8. Thus, Denouden's assertion of a property interest in her copyrighted and copyrightable works protected by the Fourteenth Amendment must similarly fall. Appellate Brief of Respondents at 32, at n. 12.

Court review is necessary to clarify the state immunity issue because according to respondents and their reading of *Seminole*, the courts do not have jurisdiction over this copyright case since Congress did not have the power to abrogate state immunity in the first place.

If petitioner can not rely on the unequivocal and specific language in the Copyright Act of 1990, or on Eleventh or Fourteenth Amendment doctrine, then what other course is there to follow--if the federal courts do not have jurisdiction and Congress does not have the power to abrogate state immunity? For the original Complaint filed in August 1995 sought injunctive relief to keep state officers from continuing to violate her copyrights, in accordance with *Ex parte Young* doctrine. However, the Ninth Circuit did not address the issue on appeal. Hence, there were not several avenues open to petitioner for ensuring state compliance with copyright laws. Was the congressional amendment to the Copyright Act of 1990 in response to *Atascadero, BV Engineering* and the other cases all for naught?

Can Fifth Amendment privilege be asserted during civil discovery proceedings to protect privacy rights accorded under 20 U.S.C. § 1232(g) and title 17?

The Supreme Court has not addressed the issue of whether the fifth amendment can be asserted during discovery proceedings to protect certain privacy rights implicit in other statutes.

It would be of national importance for the Court to decide what the appropriate levels of confidentiality and privacy are under 20 § 1232(g) concerning personal identifiable data and reports which must be submitted when making application and attending an educational institution. Also, the Court has never weighed in on the issue of confidentiality and privacy regarding federal income tax returns since the Sixteenth Amendment first came into effect back in 1913. Today, however, students must submit personal identifiable data and income tax reports in order to be officially enrolled in schools, and to qualify for educational programs.

Petitioner invoked the fifth amendment during civil discovery proceedings to protect privacy rights accorded by provisions of 34 CFR Part 99, Section 99.37 (App. 5), and its state equivalent, WAC 478-140-010 (App. 6). Petitioner had informed respondent University when making application that she did not want her personal identifiable data and reports made public.

The Court seems to recognize the need for privacy to protect personal identifiable data from unwarranted disclosure. In Whalen v. Roe, the Court held (in part) that:

> We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files. The collection of taxes, the distribution of welfare and social security benefits, the supervision of public health, the direction of our Armed Forces, and the enforcement of all criminal laws all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed. The right to collect and use such data is typically accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures. *Id.* at 605, 97 S.Ct. at 879.

The concomitant federal statute in this case is 20 U.S.C. § 1232(g) FERPA (App. 7). Petitioner invoked fifth amendment privilege during civil discovery to protect from disclosure personal identifiable data and reports which respondents themselves freely admit they do not need to defend this suit:

> Defendants are not implying in any way that the personally identifiable information plaintiff sought to protect would establish a defense to this copyright lawsuit. (Respondents Supp.Exc.Rec. pg. 150, at line 8) (DC docket no. 104)

Yet the Ninth Circuit affirmed the district court's sanctioning and dismissal of petitioner case for invoking the fifth during civil discovery. With no countervailing need to know, the fifth amendment should protect personal data and reports from unwarranted disclosure.

The Ninth Circuit's decision to not address the issue conflicts with several opinions in other circuits. For instance, in the Third Circuit case of I.B.E.W. Local U. No. 5 v. U.S. Dept. of HUD, the court recognized the sensitive nature of required reports, as it reasoned that:

> Faced with an identifiable privacy interest and no countervailing public interest, we must conclude that the release of Social Security numbers would constitute a clearly unwarranted invasion of privacy and is therefore barred by Exemption 6 of 5 U.S.C. § 552(b)(6) (1982).

The *I.B.E.W.* court went on to state that:

> [Individuals] have a strong privacy interest in their social Security numbers. Congress has recognized this privacy interest by making unlawful any denial of a right, benefit, or privilege by a government agency because of an individual's refusal to disclose his Social Security number. Privacy Act of 1974, Pub.L. 93-579, § 7, 88 Stat. 1896, 1909 (1974), *reprinted in* 5 U.S.C. § 552a note (1982). Moreover, in its report supporting the adoption of this provision, the Senate Committee stated

> that the extensive use of Social Security numbers as universal identifiers in both the public and private sectors is 'one of the most serious manifestations of privacy concerns in the Nation.' S.Rep. No. 1183, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News 6916, 6943.

The Ninth Circuit is in conflict with a 1993 Fourth Circuit case on the same issue. To illustrate, in Greidinger v. Davis the court held (in part) that:

> Since the passage of the Privacy Act, an individual's concern over his SSN's confidentiality and misuse has become significantly more compelling. For example, armed with one's SSN, an unscrupulous individual could obtain a person's welfare benefits or Social Security benefits, order new checks at a new address on the person's checking account, obtain credit cards or even obtain the person's paycheck. In California, reported cases of fraud involving the use of SSNs have increased from 390 in 1988 to over 800 in 1991. Succinctly stated, the harm that can be inflicted from the disclosure of a SSN to an unscrupulous individual is alarming and potentially financially ruinous. Other issues include unlocking the door to another's financial records, school records, financial aid records, and medical records. These are just examples

> and our review is by no means exhaustive; we highlight a few to elucidate the egregiousness of the harm.

The Ninth Circuit is likewise in conflict with the 1993 Second Circuit case of Re: W.R. Grace & Co.-Conn. regarding privacy and disclosure of personal information.

It is important to note, however, that a lower court did address the issue of privacy regarding required records and reports within the educational arena. Petitioner turns to the case of Bauer v. Kincaid where the court reasoned that:

> FERPA protects as confidential, information that a student is ***required*** to produce or divulge in conjunction with application and attendance at an educational institution. FERPA also protects academic data generated while an individual is a student at an educational institution [emphasis added].

It seems that *Bauer* recognizes that FERPA creates some type of privacy between school and student where required reports are concerned. Petitioner invoked the fifth during civil discovery to preserve rights accorded to her as a student under FERPA.

Petitioner likewise raised fourth amendment concerns during discovery proceedings to protect her right to be secure in person, house, papers and effects, and against unreasonable searches and seizures by the state. Petitioner did so because she thought it unreasonable for

the state to compel her to disclosure personal information (e.g., medical and income tax records, social security number) which they admit that they do not need to defend this case. In essence respondents do not need petitioner's personal information to defend a lawsuit--yet they just want disclosure for disclosure sake.

In 1978, the Court posited in Oppenheimer v. Sanders that discovery is not without ultimate and necessary boundaries. And Rule 26 was established to define the scope and limits of discovery:

> Parties may obtain discovery regarding any matter...which is relevant to the subject matter involved in the pending action [...]. The information sought need not be admissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Respondents were never required to show substantial need, or show how the personal data and reports would reasonably lead to the discovery of admissible evidence.

Petitioner thought it reasonable to assert the fifth during discovery proceedings because she had already provided respondent University with personal data and reports while making an application for attendance. Now, however, the University is a defendant in this lawsuit and petitioner desired to protect her privacy rights to keep respondents from obtaining her personal data from her University files.

Respondents are forcing petitioner to be a witness against herself by compelling public disclose of data and reports which they can then use to file ownership claims for petitioner's manuscripts. Since the state admits that petitioner's personal data is not needed to defend to this lawsuit, (e.g., medical and income tax records, social security number) then what is the information needed for, in light of the reasoning found in Rule 26?

Petitioner asserted the fourth amendment to preserve her right to make some sort of living from writing. It is established fact that the state has taken petitioner's property--her copyrighted manuscripts--without due process of law or compensation, converted the same to their personal use--and subsequently claimed sovereign immunity from suit. When the state converted petitioner's manuscripts to its personal use this action resulted in her not being able to approach publishers with the manuscripts in question.

The Ninth Circuit's decision in this case is in conflict with its own ruling in Wyle v. R.J. Reynolds Industries, Inc. In *Wyle*, the Court noted two (2) points of law concerning due process and dismissal--two points of law not applied in petitioner's case:

> Sanctions interfering with litigant's claim or defense violate due process when imposed merely for punishment of an infraction that did not threaten to interfere with the rightful decision of the case. Fed. Rules Civ. Proc. Rules 11, 37, 28 U.S.C.A. *G-K Properties v. Redevelopment Agency*, 577 F.2d 645, 648 (9th Cir. 1978); and

> District court's use of sanction is limited by two standards: first, any sanction must be just; second, sanction must be specifically related to particular claim which was at issue to provide discovery.

It seems far from just for the court to affirm dismissal of this case for simply invoking constitutional and statutory privileges during civil discovery proceedings. It is more unjust still to do so when respondents admit that they do not need petitioner's information to defend this lawsuit.

CONCLUSION

The Copyright Act as amended in 1990 contains unequivocal and specific language stating that Congress intends for defendants and states alike to be subject to suit in federal court for copyright infringement.

The Ninth Circuit's decision to affirm dismissal of this case for asserting fifth amendment privilege during civil discovery proceedings conflicts with the Court's own rulings In re Master Key Litigation; Campbell v. Gerrans; U.S. v. Bodwell and U.S. v. Drollinger.

Asserting the fifth during civil discovery proceedings was the only way petitioner could stave off an unreasonable seizure of her private records by the state; protect her rights under title 17 and FERPA, and somehow stop the state from further depriving her of her copyrighted manuscripts.

For the reasons set forth above, Nannette Denouden respectfully requests that her petition for a writ of certiorari be granted.

DATED: February 11, 1999.

Respectfully submitted,

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Appendix 1

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED

Nov 17 1998

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NANNETTE DENOUDEN Plaintiff-appellant	No. 98-35025
v.	DC CV95-01281-BR Western Washington (Seattle)
University of WA; Dan Jacoby, Professor; Norman Rose, Dean; Steven Olswang, Patrick C. Morris, Professor Defendant-Appellees	ORDER

Before: HUG, Chief Judge; SCHROEDER and KOZINSKI, Circuit Judges.

The petition for rehearing is denied.

Appendix 2

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
Jul 28 1998
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NANNETTE DENOUDEN Plaintiff-Appellant,	No. 98-35025 DC CV-95-01281-R
v.	
University of WA; Dan Jacoby, Professor; Norman Rose, Dean; Steven Olswang, Patrick C. Morris, Professor Defendant-Appellees.	MEMORANDUM[1]

Appeal from the United States District Court
for the Western District of Washington
Barbara J. Rothstein, Cheif Judge, Presiding

Submitted July 20, 1998[2]

Before: Hug, Chief Judge, Schroeder and Kozinski, Circuit Judges.

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral arguments. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

Appendix 2

Nannette Denouden appeals pro se the district court's dismissal of her action against the University of Washington, alleging violations of the Copyright and Privacy Acts. We conclude the district court did not err by dismissing this action for Denouden's refusal to comply with reasonable discovery requests.

Under Fed.R.Civ.P. 37(b)(2)(C), "[i]f a party. . .fails to obey an order to provide or permit discovery, . . .the court in which the action is pending may make. . .an order. . . dismissing the action." We review discovery sanctions under Rule 37 for abuse of discretion. Fjelstad v. American Honda Motor Co., 762 F.2d 1334, 1337 (9th Cir. 1985). When the sanction is dismissal, the "range of discretion is narrowed and the losing party's non-compliance must be due to willfulness, fault, or bad faith." Id. (citation omitted). Willfulness, fault, or bad faith are demonstrated by a showing of "disobedient conduct not shown to be outside the control of the litigant." Henry v. Gill Indus., Inc., 983 F.2d 943, 948 (9th Cir. 1983).

The district court gave Denouden numerous opportunities to respond fully to discovery requests and warned her three times that failure to comply with the court's orders would result in dismissal. The record does not suggest that her failure to respond was caused by factors outside her control. Accordingly, the district court is **AFFIRMED.**

Appendix 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FILED

November 24, 1997

NANNETTE DENOUDEN Plaintiff, v. UNIVERSITY OF WA et al., Defendants.	Case No. C95-1281R Order Granting Motions for Sanctions and to Dismiss

The Court has reviewed defendant's "Motion of Sanctions" (docket no. 117) and "Defendants' Motion to Dismiss," (docket no. 128); the filings of the parties relating to those motions; the Report and Recommendations of U.S. Magistrate Judge John L. Weinberg; and the balance of the record. It is therefore ORDERED;

(1) Defendants' Motion to Dismiss is GRANTED. This action is dismissed with prejudice, pursuant to local Rule CR 37(b)(2)(C).

(2) Defendants' Motion for Sanctions is GRANTED. Plaintiff shall pay monetary sanctions in the amount of $77.00 to defendants. This amount shall be in addition to the sanctions previously imposed by this court and shall be paid pursuant to the payment schedule ordered during the deposition conducted July 2, 1997.

(3) The Clerk shall enter judgment accordingly; and shall provide copies of this Order and the Judgment to plaintiff, to counsel for defendants, and to Judge Weinberg.

DATED this 21st day of November, 1997.

s/ Barbara J. Rothstein
Barbara Jacobs Rothstein
United States District Judge

Appendix 4

Title 17 § 511 entitled Liability of States, instrumentalities of States, and State officials for infringement of copyright Section (a) as amended in Pub.L. 101-553, § 2(a)(2), November 15, 1990, 104 Stat. 2749: Any State, any instrumentalities of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 119, for importing copies of phonorecords in violation of section 602, or for any other violation under this title.

Appendix 5

34 CFR Part 99 Section § 99.37(2) Family Educational Rights and Privacy; What conditions apply to disclosing directory information? (Authority 20 U.S.C. 1232g(a)(5) (A) and (B))

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of--

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all types of information about the student as directory information;

Appendix 5

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

Appendix 6

Washington Administrative Code Rules for the University of Washington 478-140-010 University Policy on Student Education Records

Public Law 93-380, The Family Educational Rights and Privacy Act of 1974, requires that the University adopt guidelines concerning the right of a student to inspect his or her education records, and guidelines concerning the release of personally-identifiable information to third parties. The act further provides that such a student has a right to a hearing in order to provide for the correction or deletion of inaccurate, misleading or otherwise inappropriate data. The act also provides that students be informed annually of the types of education records maintained by the university that are directly related to students.

Consistent with the act, this policy on student education records is established to insure that information contained in such records is treated in a responsible manner with due regard to the personal nature of the information.

Appendix 7

20 § 1232(g) Family educational and privacy rights (verbatim pertinent text)

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(a) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (b), those records, files, documents, and other materials which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "educational records" does not include--

(I) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible to any person except a substitute;

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

> (6) For the purposes of this section, the term "student" includes any person with respect to whom the educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(4)(b) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other to have access to such information without the consent of the parents of the student.

(d) Students' rather than parents' permission or consent: For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.